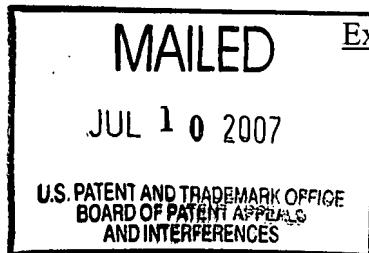


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte: ALI RIHAN and EMERSON KEITH COLYER

Application No. 09/965,423

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 14, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

EXAMINER'S ANSWER

On December 30, 2004, an Examiner's Answer was mailed in response to the Appeal Brief filed October 4, 2004. A review of the Examiner's Answer reveals that it is defective, as identified in this Order, as set forth in the new rules under 37 CFR 41.37(c).

Application No. 09/965,423

In accordance with the rules changes effective September 13, 2004, under 37 CFR 41.37(c), Appellant is no longer required to provide the appendix headings entitled “Issues” or “Grouping of Claims. ”

ISSUES

The Examiner’s Answer, (pg. 2, par. 6) includes the heading “Issues. ” The Examiner indicates that the Appeal Brief filed October 4, 2004, includes this appendix heading and provides a statement regarding the issues. The Examiner in his Answer states:

(6) Issues

“The appellant’s statement of the issues in the brief is correct”.

However, the Appeal Brief filed October 4, 2004, does not include the appendix heading “Issues.” Correction is required.

GROUPING OF CLAIMS

On page 3, paragraph 7, the Examiner includes the appendix heading “Grouping of Claims”. The Examiner’s explanation that follows this heading indicates that the Appeal Brief, filed October 4, 2004, failed to identify whether the rejected claims stand or fall together. As such the Examiner’s Answer makes the decision that:

(7) Grouping of Claims

“[t]he rejection of claims 1-25 stand or fall together because appellant’s brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof.”

Application No. 09/965,423

Therefore, it is noted the appellant did not fail to include this appendix heading in the Appeal Brief filed October 4, 2004, because the appendix heading “Grouping of Claims” is no longer a required. See 37 CFR 41.37(c). Correction is required

REJECTION UNDER 35 U.S.C. 103(A)

The Examiner’s Answer requires clarification of the claims rejected under 35 U.S.C. 103(a) , as anticipated by Rockrath et al (U.S. 5,716,678) in view of Rink et al. (5,759,631).

Under the appendix heading Grounds of Rejection to Be Reviewed on Appeal (pg. 4, II), the Examiner indicates Claims 1-16 and 22-25 stand rejected under 35 U.S.C. 103(a) as being anticipated by Rockrath et al. in view of Rink et al.

However, under the appendix heading Arguments (pg. 6, II), the Examiner indicates that Claims 16 and 22-25 stand rejected under 35 U.S.C. 103(a), as being anticipated by Rockrath et al. in view of Rink et al.

Clarification of the rejection and/or correction of the record is required.

RELATED PROCEEDINGS APPENDIX

The Examiner’s Answer omits the required heading “Related Proceedings Appendix.” Correction of the record is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) vacate the Examiner's Answer mailed December 30, 2004;
- 2) issue and mail a PTOL-90 to correct the Examiner's Answer:
 - a) clarify the claims being rejection under 35 U.S.C. 103(a), as identified above, and
 - b) correct the appendix headings, as required in compliance with 37 CFR 41.37; and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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